

## **AFFORDABLE HOUSING**

### **Introduction**

The provision of affordable housing is a key element of the Government's plan to end the housing crisis, tackle homelessness and provide aspiring homeowners with a step onto the housing ladder. It was also a key feature of the [Rye Neighbourhood Plan](#).

### **What is “Affordable Housing”?**

Gov .UK: [Affordable housing supply - GOV.UK \(www.gov.uk\)](#) defines affordable housing as:

“Affordable housing includes social rented, affordable rented and intermediate housing, provided to specified eligible households whose needs are not met by the market. It can be a new-build property or a private sector property that has been purchased for use as an affordable home.”

In simple terms, affordable housing is defined as any home, rented or owned, in which costs comprise less than 30% of the household monthly income. There are several categories:

- Social rented housing – low rent, secure housing prioritised by need.
- Affordable Rent housing – higher rent, less secure housing prioritised by need.
- Shared ownership – housing that you buy part of and rent part of.
- Intermediate Rent homes – 80% market rate housing.

### **What does the Rye Neighbourhood Plan (RNP) say about affordable housing?**

The Planners carried out significant work to establish housing background. This is summarised at Enclosure 1.

The work pointed to conclusions that “there is therefore high demand for “affordable housing”, resulting in demand outstripping supply. The evidence indicated that:

*“there was a need for the provision of smaller homes, especially for young families, young people and for older people who wish to downsize. Although the Core Strategy Policy LHN2 stipulates that for developments of 10+ dwellings, there will be 30% (of the total) affordable housing to meet local needs in Rye, there are other factors dictating the need for this to be handled as part of the Rother strategic plan.”*

*“any policy to increase the amount of housing must ensure that housing stock and population mix remain balanced whilst new development must also be financially viable. The Rother Core Strategy requires that allocated housing sites for 10*

*dwellings or more must provide 30% as affordable housing as defined in the NPPF.26”*

### **What is the Housing Need in Rye?**

Calculating housing need is complicated in popular living places such as Rye because so many people want to move in from other parts. How do you calculate a requirement, when market forces and high demand predominate? This demand is across the complete range of dwellings and cost brackets, from first homes at around the £200k to multi-million £ homes for incomers.

In recent years, with the reduction in stamp duty, there has been an increased demand for second homes and buy to let properties which lifts prices. This also makes it difficult for those local people trying to get onto the ladder.

### **What were the considerations of the Rye Neighbourhood Planners?**

At the Rye P&T meeting on Mon 4 Sep 2017, the Committee asked the RNPSG to re-examine again the policy in the then draft RNP on second homes/ and buy to let properties. The context was the proposal for 72 homes on the lower school site (RNP allocates this to housing with no more than 50 units) and apparently rising numbers of second home buyers, often from London, encouraged by local estate agents. (Example is below).

*Rye Buyers Profile (Quote from Phillips and Stubbs Rye Website) The holiday home market is strong in Rye and the surrounding villages, with approximately 20% of sales being for second homes or holiday lets. Other major buyers are retired couples, usually from London, who by downsizing are also able to release money to augment their pensions. Some of course are people who left Rye when they were young to further their careers, and want to come back to their roots, while others are those who came to the area for childhood holidays and have continued to visit ever since. A new and growing group are people who, since the advent of faxes, email and broadband, are able to work from home and want to move their families out of the city to what they rightly see as a better environment .*

Some Councillors felt that we should do more in the RNP by way of policy to restrict new build open market sales as they have done in places such as St Ives.

Leaving aside the challenge of defining a second home (does this include purchases into which buyers - mostly from London - intend to retire within 5 years?) In Rye it is calculated that there are some 400 second homes/buy to let homes; this of a total stock of around 2500. This represents some 8%. In St Ives the figures are acute (25% non residents). However, with the possibility of the Fast Rail Marsh link it is not to say that the numbers here will grow. What merit in taking ‘a stitch in time .....’ approach? But can it be justified on forecasts? Over the last two years the trend for second homes/buy to let has increased, but changes to the tax laws have damped down this market. Rother has been invited to validate the figures.

Although many in Rye may see more stringent policy on second homes as desirable, solid evidence is required to justify it and there are clearly impacts in terms of definition, monitoring and enforcement. Who would do this? .... at what cost?

Advice was sought from Rother DC officers and the RNP consultant. Both advised against adopting stringent policies.

However Rye Town Council as owner of the RNP, could choose to modify or strengthen the existing policy H2 (perhaps along the lines of that of St Ives – see below) if it feels that there is sufficient community support. However, as suggested below, such policy is not without challenges such as definition, enforcement and potentially costs.

The RNPSG considered carefully the St Ives policy (Enclosure 2). Because of the perceived adverse impact upon the local Cornish housing market by the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes), St Ives<sup>1</sup> adopted a policy for new open market housing, excluding replacement dwellings, which supports a restriction to ensure its occupancy as a Principal Residence<sup>2</sup>.

The RNPSG Recommended: “Having consulted again, it was felt that the evidence did not support the sort of policy adopted by St Ives, because the numbers are not so acute. In addition, there are the significant challenges of definition, monitoring and enforcement: work which would probably fall to Rye TC. Some considered that there is adequate provision in the existing RNP policy to cover affordable housing. Therefore it was recommended that the draft RNP policy remained as in the Referendum version of the RNP.”

### **Has there been any further consideration of Affordable Housing since the RNP was made?**

The RNP was made in July 2019. At a Rye P&T Meeting in late 2019, affordable housing was raised in the context of the recently agreed proposal for the Lower School Site. Council knew that no affordable housing was part of the proposal, because the developer argued that it was not viable to do so, but despite this, and other issues, Rother Planning approved the plan but with numerous conditions.

Since then there have been further discussions about affordable housing within the Rother NP Group chaired by Chair Rother Planning. The gist of a some of what has been debated particularly viability of development, has been circulated separately. For ease of reference, the argument deployed by developers focuses on land value

---

<sup>1</sup> Other neighbourhood plans, both in Cornwall and beyond, such as *The Roseland Plan 2015-2030* and *The Lyn Plan (Lynton and Lynmouth) 2013-2028*, have sought to put in place policies with the same objective but have run into trouble with the external examiner as there was insufficient evidence to support the policy

<sup>2</sup> Principal Residences are defined as those occupied as the residents' sole or main residence, where the residents spend the majority of their time when not working away from home.

which when calculated with build costs and other costs such as contribution (CIL and S106 plus any contribution in lieu of Affordable Housing) reduces (virtual) profit. It is qualified that this is virtual because as in the case of LSS, the developer's case was calculated on potential worth of the site, when compared within similar values elsewhere, not actual price paid. Rother accepted this because the rules allow it.

Therefore, given the uncertainty in the Rock Channel and now the Freda Gardham; the continued lease of the land at Rye Hire, a review of the development land listed in the RNP prompts the question: what prospect for any affordable housing in Rye?

It was proposed to look at what scope there is within the RNP to consider a CLT project for affordable housing and report back. By way of compensation of loss of affordable homes elsewhere, we have earlier proposed to Rye TC that a CLT project (like some in Brighton) for affordable homes could be pursued by the Council for the green space of the TG school site. The RNP sets policy (H3) for such a project.

The principle has been discussed within the Rother NP Group and with Chair Rother Planning. He and the Rother Planning Committee would be sympathetic to any proposal coming forward.

Advice from the Rye Partnership is that a proposal for land at the former school at Tilling Green, drawing on the planning work by Amicus Horizon for its earlier proposal (subsequently withdrawn) for a mix of social and open market dwellings, "is being negotiated". Any such proposal for the land could be for up to 20 dwellings entirely in the "affordable" category as a local social enterprise.

### **Rother Alliance Homes**

In 2020, Rother District Council has formed Alliance Homes. "This will operate with the primary target of speeding up the rate of policy compliant development, throughout the District, to meet Local Plan targets. The Company are at the beginning of a programme that will see the delivery of at least 1000 new homes over the next 15 years. This programme will commit to delivering schemes that fulfil their affordable housing commitment, as per Local Plan Policy, meaning that between 350-400 new affordable homes will be delivered throughout this process.

The company will actively seek every opportunity to ensure that additional affordable homes can be delivered by working with traditional and 'for profit' registered providers who can draw down central government funding.

The Company will act as a delivery partner with the Council in working towards achieving a number of ambitions described in the Rother District Council Environment Strategy. The Company has made it a key priority that all development brought forward by the Company will seek to deliver homes to very high environmental standards taking a fabric first approach to design, maximising thermal efficiency, meaning that the need for additional space heating and energy input is significantly reduced. "

Alliance Homes has identified at least one site in Rye where they see the Rother owned former Council Depot site (leased to Rye Hire) as potential for development of around 10 units with some affordable homes.

## **Conclusions: What to do?**

Affordable housing remains a big issue for Rye, with high land and property prices and huge demand across the range of dwellings.

The high turnover, in recent years, of existing housing stock for sale as second homes and buy to let properties has aggravated the supply situation. It is not usual for restrictive policies to apply to existing stock as they would penalise certain house owners.

There is little provision of affordable dwellings in prospect from those development sites allocated in the RNP and subject to proposals. Therefore policies such as the St Ives type may not have an effect.

Having reviewed the work that contributed to the RNP, and having looked at developments since, it remains uncertain that a revised policy for new build homes along the lines of the St Ives Policy could be practical or supported at a required Referendum.

As land availability is one of the key factors in any proposal, there remains some "state owned land " (most owned by ESCC and Rother District) that is identified in the RNP and could well form the basis of a future proposal, either by Alliance Homes or a not for profit partnership including Rye TC, or by a collective. This land represents a key opportunity for affordable homes and should not be squandered. There would be several options for planning and funding such a proposal on such land.

This would seem to present the best opportunity for achieving an early amount of affordable housing, through one or more small projects in which Rye Town Council could participate as a partner.

Some of those who worked on the delivery of the RNP might be prepared to contribute to such a venture.

ATBK PhD  
RNP Coordinator

March 2021

Enclosure:

1. Rye Housing Background
2. The St Ives Exemplar

## E1 - Rye Housing Background Facts (June 2016)

Rye (as at June 2016) has a population of around 4255 living in 2,485 households. Analysis of the housing stock, demographic data and local housing market has revealed:

<b>Totals in Rye Parish</b>	<b>Breakdown by Age<sup>3</sup></b>				
<b>Citizens</b>	<b>0-14</b>	<b>15-29</b>	<b>30-44</b>	<b>45-64</b>	<b>65+</b>
4255	14%	15%	16%	28%	26%

<b>Present Dwellings – Composition</b>				
<b>Total households</b>	<b>One person households</b>	<b>Family households</b>	<b>Other categories</b>	<b>Remarks</b>
2485	40%	54%	6%	1500 private homes (Includes 175 2 <sup>nd</sup> homes) 350 private rented 400 social

The Housing Need was established by considering a variety of factors below:

Supply Costs (May 2016) Location is everything, but open market categories range from £175k (2 bed terraced in Zone B) to multi millions (house in Citadel). Mid ranges are around:

1 bed = scarce supply

2 bed = £175k upwards (Undercliff dwellings are £175; Valley Park (VP) P5 starts £265K)

3 bed = £250k upwards (VP P5 starts £365K)

Bungalows are in high demand and in short supply (can achieve around £400k)

4 bed = £450k upwards (VP P5 £525K; Dead Mans Lane £595K)

---

<sup>3</sup> East Sussex in Figures 2011

Garage = £15k upwards to £50K in the upper Citadel.

Rents range from around £800 (small one bed) to 3000 per month (house in Citadel). Holiday/short lets can be mean weekly rent equivalent to normal monthly.

## **The Elderly**

Badger Gate: Amicus. Udimore Road, Rye, East Sussex TN31 7DT. 29 flats: 1 bed and 2 bed. Built in 1966 and renovated in 1990. Rents from £98.57 exclusive per week (2013 prices).

Magdala House: Amicus. Ferry Road, Rye, East Sussex TN31 7DN. 15 flats: 1 bed. Built in 1988. Rents from £103.81 excl per week (2013 prices).

Devonport House: Sussex Housing and Care. Tower Street, Rye, East Sussex TN31 7AT. 18 flats: studio and 1 bed. Built in 1982. Includes mobility standard properties. Rents from £459.46 inclusive per month (2013 prices)

Strand Court: Burkinshaw Block Management. 49 flats: 1 bed and 2 bed. Built in 1988. Open Market around £150K. Includes wheelchair standard properties. Manager on call.

In the adjacent Parish of Rye Foreign: Sanctuary St Bartholomew's Court development provides 55 refurbished/built extra care one bed flats. "Designed to offer comfort, independence and peace of mind, St Bartholomew's Court offers 55 one bedroom apartments for the over 60s." Extra Care scheme with on-site care staff, non-resident management staff and community alarm service; lounge, guest facilities, garden, hairdressing salon, assisted bathing facility; social activities. New residents accepted from 60 years of age. Rent (social landlord) and Shared Ownership

## **Trends in May 2016**

Although these trends are dated to 2016, much is still relevant.

Rye's housing stock is fairly typical for East Sussex and is made up of: 13% 1 bed, 25% 2 bed, 36% 3 bed, 19% 4 bed and 7% 5 bed or more.

Many elderly seek 2/3 bed accessible properties to enable downsizing; premium inner town location and price in high demand (the new Cinque Ports development is occupied by residents from 62 to 82!)

Dwellings with parking are in high demand

Developers continue to seek sites for mixed development but viability (meaning need to achieve significant returns) is an issue.

Buy to (holiday or long) let accounts for as much as 75% purchases (may be to beat new legislation increasing costs). Rother DC advises that as at May 2016 the number of 2<sup>nd</sup> homes is 175.

The local market accounts for around 25% sales. “incomers” continue to seek properties for retirement or buy to let in the run up to retirement or in some cases rusticators from London (fast rail would be expected to increase the last category); there are few working “professionals” incoming. Around 10% of all enquiries result in contract.

Rye presents little for first time buyers: low local salaries; high costs, therefore most go to Ashford or Hastings. An annual salary of more than £50,000 is needed to buy a starter home in Rye. Unsurprisingly, young people and first-time buyers therefore find it difficult to afford homes in Rye. Rye has significantly fewer inhabitants between the ages of 18 and 35 than the average for the South East

The demand for new affordable homes in Rye is around 20 per year. The majority of this demand is for two bedroom dwellings. We are currently unable to meet this demand. There is a shortage of reasonably priced (estimated to be around £200,000 homes for local people

The percentage of the town’s inhabitants that are over 60 will increase from 28% to 38% over the next 15 years. That is an increase of around 500 people

There is a lack of good quality 2 to 3 bedroom housing within walking distance of the centre of the town for retirees who wish to downsize

### **Community Feedback about Housing**

The Rye consultation indicated that there was a strong feeling about housing. People felt that the plan should have things to say not only about where new housing is situated, but also about the type of housing. The plan should be clear about the levels of quality and design that we would like to see. Whilst many people were cautious about new development, the majority of people that we consulted recognised that there was a need for new housing, particularly for local people who are young or old. This would be a key factor in order to secure the town’s future prosperity. The key themes that emerged were:

- a. More affordable housing for local people
- b. More housing for the elderly, to enable “downsizing”
- c. More housing suitable as starter homes.
- d. Consider impact of second homes and holiday lets
- e. Provide adequate parking, storage and garden space.
- f. Disperse new housing across Rye

- g. Building density is an issue with all new housing development. (Policy OSS4 Rother District Core Strategy<sup>4</sup> suggests that “development should be appropriate for its context”.)

### **Developers’ Contributions**

It is intended that contributions (CIL since 2015)<sup>5</sup> by developers should be used to improve local infrastructure in priorities agreed and recorded in the 123 List<sup>6</sup> and Infrastructure Development Plan, agreed between Rye Town Council and Rother DC. Examples of the sort of infrastructure, funded by developers’ contributions and related to major development projects (recent past and future) across Rye. The list is:

- a. Valley Park: SUDS installation, roads, recreational equipment, cycle and footpaths and planting.
- b. Former Tilling Green School Site: Roads and green space and planting, affordable housing, community centre and flood mitigation.
- c. Former Lower School Site: Roads, planting, rail crossing and Station Approach improvements.
- d. Former Freda Gardham School Site: Affordable housing, roads and pathways, planting and flood defence improvements.
- e. Rock Channel and Strand: Roads and pathways, riverside walks, planting and affordable housing.
- f. Rye Harbour “Saltings”: Roads and nature reserve compensation.
- g. Rye Station Approach
- h. The Rye Greenway ( Rother District hold some £45k of contributions which have never been committed.

Other sites may be put forward but any development of them should be in the context of the RNP. An example of such a case might be the former Tilling Green

---

<sup>4</sup> <http://www.rother.gov.uk/corestrategy>

<sup>5</sup> <http://www.rother.gov.uk/CIL>

<sup>6</sup> <http://www.rother.gov.uk/CIL>

School site for which a development proposal has been withdrawn, leaving an uncertainty about its future potential.

Key findings from the residents' survey showed the community has aspirations towards home ownership at an affordable level which suits the needs of an ageing population; young first time buyers; and the growth of young families. However, there was an overwhelming desire to maintain the scale, style and setting of Rye and to protect existing green spaces and immediately surrounding countryside from development.

In recent years, windfall sites have provided a steady supply of housing at a rate of between 5 to 10 dwellings per year. This trend is likely to continue but the Plan allows for the numbers to be kept under review to ensure that sufficient development is coming forward to meet local needs.

The RNP encourages the development of self-build properties for local need on suitable plots both within and adjacent to the development boundary and the Plan supports this approach.

There have been lessons identified from recent local developments concerning developers' contributions, design, dwelling mix, access, connectivity, density, planting and screening, maintenance of public areas. All of which provide learning for the handling of future proposals.

Given quality development and effective land use, the result will be a town which still feels compact whilst being closely connected to the surrounding landscape through footpath and cycle links as well as its many green spaces.

Throughout the plan making there has been uncertainty caused by availability of sites and market forces. For instance, in the early stages Tesco and Sainsbury competed for the Lower School Site (H8 in Figure 9). Subsequently the Plan allocated this site for a second supermarket. However in 2016 because of a shift in global policy both companies abandoned their plan and the site was sold on to a housing developer. Since then the Developer, ICENI, appears to have "land banked" as no firm proposal has come forward. Not only has the Plan had to be adjusted to match the change, but deliverability is a major issue.

In Rye, development land is in short supply and expensive. We must ensure that the additional development costs that might result from our policies do not make development in Rye non-viable. We have drawn on the work on viability by Rother DC in its consideration of the Community Infrastructure Levy (CIL).

Early work on the RNP considered the role of the town in the district and the scope for development on the sites identified in the 2013 SHLAA. Other sites have also

been considered in the site assessment (RNP Support 2). Because of its topography, landscape context and statutory designations, options for development within Rye Parish are severely limited, but, despite this, the Plan does meet its requirements for housing development.

Throughout the RNP process there have been numerous conversations with land-owners, architects and potential developers to assess achievability and viability of development on all the sites considered.

Rye attracts many “incomers” who would like to live in the town, some because of family connections, some because it is an attractive place to live and is within easy travel distance to London. This has resulted in a buoyant property market, in which many local people, because of their low earnings cannot afford to buy into or even rent. Market rents are relatively high.<sup>7</sup> There is therefore high demand for “affordable housing”<sup>8</sup>, resulting in demand outstripping supply.<sup>9</sup>

The policies adopted have sought to increase the amount of affordable housing while ensuring that housing stock and population mix remain balanced and new development is financially viable. Rother DC sets a policy for 30% for affordable homes<sup>10</sup> on allocated housing sites of 10 dwellings or more, to which this Plan conforms.

The RNP Steering Group has carried out a housing needs analysis which supports a June 2017 Rother DC study (Appendix 1). New housing development proposals, especially for affordable housing, should be provided to meet recognised housing need in the parish.

The provision of smaller homes, especially for young families, young people and for older people who wish to downsize is widely supported across Rye.

### **Windfall or Opportunity Sites across Rye**

The RNP considers the need for small residential developments on infill and redevelopment sites within the parish, subject to the proposals being well designed and meeting relevant requirements set out in other policies in this Plan. These will be known as ‘windfall sites’. Development must achieve best use of land in a manner that does not adversely impact on other policies within the Plan,

---

<sup>7</sup> Rother Local Strategic Partnership – Annual Meeting 15 June 2017

<sup>8</sup> Affordable homes here means ‘social housing’ – homes which are made available to local people who have an identified need for housing but who cannot afford to buy or rent a home at market rates. Local Authorities allocate social housing to local people who have a proven housing need and are on the Council Waiting List. These mainly comprise homes to rent, but there are other options such as shared ownership and other tenures.

<sup>9</sup> Rother District Council Resident Survey by Opinion Research Services June 2017

<sup>10</sup> <http://www.rother.gov.uk/article/9895/affordable-housing>

particularly those that relate to environmental and design quality. The density of development should create a character that is appropriate to the site's context.

One of the particular issues raised by the community has been the over-bearing nature of some recent infill developments, particularly in "green areas". Some permitted developments have been high density, creating issues in terms of amenity for neighbouring properties. Adverse impacts are considered to include the following:

- a. Loss of amenity, overshadowing, overlooking
- b. Loss of sunlight/daylight
- c. Noise
- d. Loss of green links/trees/hedgerows/vegetation
- e. Visual intrusion
- f. Loss of space between buildings
- g. Difficult access for pedestrians and vehicles.
- h. Shortage of space for waste and recycling.

## **E2- St Ives Exemplar**

### ***St Ives Policy is: Principal Residence Requirement***

*Due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing, excluding replacement dwellings, will only be supported where there is a restriction to ensure its occupancy as a Principal Residence. Sufficient guarantee must be provided of such occupancy restriction through the imposition of a planning condition or legal agreement. New unrestricted second homes will not be supported at any time. Principal Residences are defined as those occupied as the residents' sole or main residence, where the residents spend the majority of their time when not working away from home. The condition or obligation on new open market homes will require that they are occupied only as the primary (principal) residence of those persons entitled to occupy them. Occupiers of homes with a Principal Residence condition will be required to keep proof that they are meeting the obligation or condition, and be obliged to provide this proof if/when Cornwall Council requests this information. Proof of Principal Residence is via verifiable evidence which could include, for example (but not limited to) residents being registered on the local electoral register and being registered for and attending local services (such as healthcare, schools etc).*

The justification for the policy was to better meet the housing needs of local people, by bringing greater balance and mixture to the local housing market and creating new opportunities for people to live and work in St Ives. This policy covers new housing which has to be used as the principal residence of the household living in it, but does not have the price controls that affordable housing does, or any local connection requirement.

St Ives (and other towns nearby) are in the top five settlements in Cornwall with the highest proportions of second homes and holiday lets. In 2011, 25% dwellings in the NDP area were not occupied by a resident household - a 67% increase from 2001. Over this same period, housing stock in the NDP grew by 684 or 16%, but the resident population grew by only 270 or 2.4% and the number of resident households grew by less than 6%. The growth in housing stock in the NDP area between 2001 and 2011 was double the average across England. The socio-economic effects of such a high proportion of holiday properties are being felt by the local community.

A Penzance architectural firm subsequently challenged Cornwall Council's decision to allow the referendum on the policy to go ahead. The High Court has ruled that the vote, which said new homes should be occupied as "principal residences", was lawful. Therefore St Ives will keep its ban on new-build second homes.

### **An Analysis of the Policy**

**Peter Edwards**, *a consultant solicitor with Brains Solicitors in Cornwall, who runs his own planning consultancy, Planning Progress Ltd has looked at the St Ives policy. He concluded that* : While the St Ives NDP may represent the most determined effort yet to produce a planning policy that is effective in preventing the occupation of newly built houses as second homes, fundamental questions remain. It appears that Policy H2, despite the best efforts of the NDP examiner whose modifications were clearly aimed at making the policy work, may not have dealt with the most fundamental question of all: what precisely is meant by a principal residence and how should it be defined? In this respect any shortcomings in the policy will need to be addressed by the terms of the restriction actually imposed on relevant planning permissions. That restriction will then need to be carefully and closely monitored by, or with the full support of, the LPA to ensure that St Ives NDP Policy H2 has the intended effect.

### **Peter Edwards Full Consideration**

This is worth reading as it provides useful background. Peter says that "It is certainly encouraging to see the St Ives examiner supporting a planning policy that the people of St Ives want to guide development in their area. That, after all, is the essence of neighbourhood planning, which some may argue is being diluted by slavish adherence of NDP examiners and planning inspectors to ministerial guidance in the form of the NPPF and National Planning Policy Guidance – neither of which is part of the statutory development plan. It is also to be applauded that the examiner made significant and detailed modifications to Policy H2 with a view to making it a more effective planning policy. However, the real problem with an 'anti-second homes' planning policy has always been what the effect of such a policy would actually be, whether or not it is enforceable and, therefore, whether it would even be valid". His arguments follow as below.

**Nature of the principal residence restriction** Before considering if the St Ives NDP really takes us any further forward, or whether the principal residence restriction is enforceable, it is worth considering the nature of the restriction and what its effect would be. Policy H2 imposes a restriction on occupancy very similar in type to the 'local occupancy' clauses that became the precedents for the affordable housing restrictions now used to keep affordable housing affordable. However, the principal residence restriction allows incomers to occupy because it does not restrict occupation to those with a pre-existing local connection, and neither – almost by definition – does it prevent ownership of more than one dwelling. Therefore, although the Policy H2 restriction does not have price controls, just like the original 'local occupancy' clauses that inevitably affected market value, the principal residence restriction is likely to create a middle tier of the housing market in the area; one that sits between affordable and open-market dwellings. The examiner of the Roseland plan appears to have been fearful of this effect, while the St Ives examiner considered that it could increase the 'wide choice of quality homes' of which the NPPF seeks delivery. However, the inherent difficulty with the principal residence restriction, unlike the controls on affordable housing, is that it implies the occupier owns or is at least allowed to own, other residences. Implicitly, there is no objection to the occupier owning as many second or holiday homes as they like, even within the same neighbourhood plan area, provided the subject property is the principal residence. In terms of planning principle, this creates no problem at all; planning for new housing stock of the type required must start somewhere.

**Is the St Ives 'principal residence' restriction enforceable?** The real problem here lies in the criteria used to define the term 'principal residence' and whether or not those criteria are capable of being fulfilled by evidence that can be easily assessed as credible and reliable. Leaving aside those occupiers who may deliberately want to confuse the issue, there may be cases where identifying the principal residence is genuinely not straightforward. It is obviously important to be able to determine if a restriction is being observed in compliance with the policy aims. But perhaps even more to the point is how a breach may be proved. A planning condition, or obligation in a section 106 agreement, is only valid if enforceable and only enforceable if a breach is capable of proof. This brings us back to the criteria used to define the term principal residence. Policy H2 of the St Ives NDP does not actually define what it means by principal residence. The only evidence of occupation as a principal residence suggested by the policy itself is registration on the electoral roll or for local services, such as schools and GPs. However, these are not conclusive forms of evidence of principal residence occupation. It is quite legitimate, for example, to be on the electoral roll in more than one district (although it is an offence to vote more than once in a general election or national referendum, there is nothing to outlaw voting in more than one local council election). The minimum 270-day occupancy requirement (of the submission version Policy H2) amounts to a definite criterion, albeit one that would be difficult to monitor accurately or reliably prove one way or the other. It may also be regarded as a rather arbitrary test of a principal residence. It may not be critical that principal residence, or the type of evidence used to prove such occupation, is not precisely defined in Policy H2. But it is essential for the defining criteria and acceptable types of evidence to be clearly stipulated in the planning conditions and/or legal agreements used to support the policy when planning permissions are issued, it may be that a number of different criteria are applied to assess compliance with the restriction, including enrolment of

children in local schools and declarations made by occupiers on prescribed matters such as ownership and occupation of other properties. The lack of any clear definition of, or defining criteria for, a principal residence will inevitably make monitoring and enforcement difficult, particularly with borderline cases. However, making clear that a number of factors will be considered will at least act as a deterrent and make possible the enforcement of determined abuse.

**Planning condition or legal agreement?** The St Ives Policy H2 allows for either method of control – but there are significant differences between the two in terms of notice to purchasers, monitoring, enforcement and how easily the restriction may be avoided. Occupation in breach of a planning condition, if monitored and detected, can usually be addressed relatively simply, either by an enforcement notice or a breach of condition notice provided, that is, the LPA has the will and available resources to take such enforcement action. However, continuous occupation lasting for 10 years or more in breach of a planning condition may become lawful and immune from enforcement action. In these circumstances, the control on occupancy imposed by the condition is lost. The ‘legal agreement’ referred to in Policy H2 is a section 106 agreement, or planning obligation, which is binding on every owner of the land or property to whom it relates. If contained in a section 106 agreement, the principal residence restriction would continue to be effective even if immunity from enforcement of the planning condition were acquired. The section 106 obligation could be enforced via the more difficult and costly route for the LPA of a county court injunction. Another disadvantage of imposing a condition only is that the condition will generally only appear on the planning permission itself, which is often only considered by the solicitors of the first purchasers after construction. By contrast, a section 106 agreement will be on the Register of Local Land Charges (and may be noted on the registered title) so should come to the notice of all future purchasers. Making the occupancy restriction the subject of a section 106 obligation renders it almost impossible for any owner to sell the property free from the restriction, even if they have gained immunity from the effect of a planning condition.

**How effective will Policy H2 be in controlling second homes?** This question should be considered in a number of different contexts. First of all, will Policy H2 and the principal residence restriction be applied to all new planning permissions for open-market dwellings in the St Ives area – that is, for all dwellings that are not affordable housing? That is obviously the intention, but although the policymaker is the qualifying body for the NDP, St Ives Town Council, Cornwall Council as the LPA will continue to issue planning permissions in the area. It will be for Cornwall Council to ensure that all relevant permissions contain an effective principal residence restriction as prescribed by Policy H2. This raises the next crucial question:

**By what means, and in what terms, will the principal residence restriction be imposed?** To ensure maximum effect the restriction will need to be imposed via planning condition and a section 106 agreement in terms that specify exactly what is meant by the restriction and what evidence will be required to prove compliance with it. It will be important that any such evidence is capable of being presented reasonably easily and assessed so that compliance can be effectively monitored and any breach enforced against. Otherwise, the restriction would not be merely ineffectual; whether a planning condition or a section 106 obligation, it runs the risk

of being declared invalid (if not enforceable). In this worst-case scenario, Policy H2 would be completely undermined and serve no purpose at all.

**How will the restriction be monitored and enforced?** Effective monitoring and enforcement is likely to depend on close liaison between St Ives Town Council, which represents those with the interest in making Policy H2 work, and the LPA – Cornwall Council – with its statutory enforcement powers. In practice, the town council will probably have to monitor compliance with the restriction and collaborate with Cornwall Council in gathering and assessing evidence of any breach that may lead to enforcement action.